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7 and Solomon Capital, Inc.

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10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 (SAN JOSE DIVISION)

12 STEVE TRACHSEL, et al.,

13 Plaintiffs,

14 vs.

15 RONALD BUCHHOLZ, et al,

16 Defendants.

Case No. C08-02248 RMW

**OBJECTION AND MOTION TO STRIKE
THOMAS CIRRITO DECLARATION**

Date: August 8, 2008

Time: 9:00 a.m.

Ctrm: 6

Judge: Hon. Ronald M. Whyte

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19 Defendants Ronald Buchholz, Charice Fischer, RDB Development, LLC, and Solomon
20 Capital, Inc. object to, and move to strike, the “Declaration of Thomas Cirrito in Support of
21 Plaintiffs’ Reply to Opposition in Support to Application for [Writ of Attachment and] (sic) Right
22 To Attach Order” on the following grounds:

23 Mr. Cirrito’s statements are (a) irrelevant to the issues to be decided and (b) unsworn and
24 incompetent.

25 (a) **RELEVANCE:** The only issue important as to Thomas Cirrito is whether he was an
26 “accredited investor” as that term is defined in securities laws. If he was, then he is deemed as a
27 matter of law to be a purchaser who “by reason of . . . business or financial experience . . . could be
28 reasonably assumed to have the capacity to protect their own interests in connection with the

1 transaction” under the limited offering exemption of California Corporations Code section
 2 25102(f)(2).

3 This is made clear in Rules 260.102.12 and 260.102.13 of the California Code of
 4 Regulations.¹ Rule 260.102.12 provides that the term “purchasers” used in section 25102(f)(2)
 5 does not include those who are “excluded from the count of purchasers” under Rule 260.102.13.²
 6 Accredited investors are among those excluded from that count under Rule 260.102.13.³

7 Mr. Cirrito was an accredited investor at the time of the underlying transaction and he does
 8 not claim otherwise. His vague and conclusory statements about lack of prior real estate investment
 9 experience are irrelevant to the issue of whether the transaction was exempted from the California
 10 Corporations Code’s registration requirements under section 25102(f).

11 **(b) UNSWORN:** Mr. Cirrito’s “declaration” is simply signed, but not *under penalty of*
 12 *perjury* as required by law. 28 U.S.C. §1746. The declaration is inadmissible in its entirety.

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 14 Dated: July 29, 2008.

PINNACLE LAW GROUP, LLP

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 16 By: /s/ William W. Schofield
 17 William W. Schofield
 18 Attorneys for Defendants
 19 Ronald Buchholz, Charice Fischer,
 20 RDB Development, LLC,
 21 and Solomon Capital, Inc.

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 26 ¹ Calif. Code of Reg., Title 10, Chapter 3, §§260.102.12, 260.102.13.

27 ² *Id.* at §260.102.12(d)(2).

28 ³ *Id.* at §260.102.13(g).